TESTIMONY
OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
HEARING ON
H.R. 3699 AND H.R. 2306

June 5, 2008

Good morning, Mr. Chairman, Mr. Vice Chairman, and Members of the Committee. I am pleased to be here today to testify on two legislative bills, H.R. 3699 and H.R. 2306. Both bills intend "to provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe (Tribe) by the United States Court of Federal Claims in Docket Numbers 18 and 188, and for other purposes."

In April 2007, the Department of the Interior submitted a legislative proposal to the Speaker of the House of Representatives and to the President of the Senate pursuant to the Indian Tribal Judgment Funds Act (Act) of October 19, 1973, 87 Stat. 466, 25 U.S.C. §1401 *et seq*., as amended. The Act requires the Secretary of the Interior to submit to the Congress a plan for the use or distribution of funds to an Indian tribe. Under subsections 2(c) and (d) of the Act, should the Secretary determine that circumstances do not permit for the preparation and submission of a plan as provided under the Act and the Secretary cannot obtain the consent from the tribal governing body concerning the division of the judgment funds within 180 days after the appropriation of the funds for the award, the Secretary is required to submit to the Congress proposed legislation to authorize use or distribution of such funds. The proposal submitted by the Department was introduced by Representative Peterson on May 14, 2007 as H.R. 2306.

Both bills before the Committee today would distribute funds awarded to the Minnesota Chippewa Tribe (Tribe) by the United States Court of Federal Claims in Docket Nos. 19 and 188. The claims in Docket Nos. 19 and 188 mostly involved claims for additional compensation for lands ceded under the Nelson Act, dated January 14, 1889, 25 Stat. 642, and for improper timber valuations. The purpose of the Nelson Act was to establish a process for negotiating with the Chippewa Indians of Minnesota to obtain land cessions for certain lands that had been reserved for them under various treaties. Once the land cessions, land surveys, and land valuations were complete, the ceded lands were opened for settlement under the homestead laws. The proceeds of the land sales were deposited into the United States Treasury for the benefit of the Chippewa Indians of Minnesota.

The "surplus lands" on the Chippewa Reservations were available for disposal under the Nelson Act for many years. The availability of those lands officially ended in 1934 when Congress enacted the Indian Reorganization Act (IRA), dated June 18, 1934, 48 Stat. 984. Section 3 of the IRA authorized the restoration of the remaining surplus lands of any Indian reservation to tribal ownership.

On January 22, 1948, the Minnesota Chippewa Tribe, representing all Chippewa bands in Minnesota except the Red Lake Band, filed a claim before the Indian Claims Commission in Docket No. 19 for an accounting of all funds received and expended pursuant to the Nelson Act.

On August 2, 1951, the Minnesota Chippewa Tribe, representing all Chippewa Bands in Minnesota except the Red Lake Band, filed a number of claims before the Indian Claims Commission in Docket No. 188 for an accounting of the Government's obligations to each of the member bands of the Tribe under various statutes and treaties that are not covered by the Nelson Act of January 14, 1889.

The principal sum of the funds awarded to the Minnesota Chippewa Tribe, et al., in Docket Nos. 19 and 188 total $20,000,000. These funds were transferred to the Department under 31 U.S.C. 1304 on June 22, 1999 and have been held in trust since.

The Tribal Executive Committee (TEC) of the Minnesota Chippewa Tribe enacted a resolution calling for the funds to be divided equally among the six Bands. Four out of the six councils want the funds divided evenly six ways and those four councils represent about 27 percent of the total membership. The TEC proposal would result in 67 percent of the funds being distributed to the four smaller Bands, and 33 percent of the funds being distributed to the two larger Bands with 73 percent of the total membership.

The Leech Lake Band represents about 20 percent of the total enrolled members in the six Bands. It supported the view that the funds be divided in proportion to the losses suffered by each of the Bands, which is neither a pro rata nor an equal distribution position. The lands sold from each of the reservations were originally reserved to the Bands under treaty. Under the terms of the Nelson Act, Leech Lake gave up the most land and received the least compensation per acre. Under Leech Lake's proposal, it would receive 70 percent of the funds.

The White Earth Band represents 53 percent of the total enrolled members. It supported a pro rata division of the funds based upon the number of tribal members enrolled within each of the Bands.

On June 6, 2001, the Acting Deputy Commissioner of Indian Affairs issued a Results of Research Report on the Judgment in Favor of the *Minnesota Chippewa Tribe, et al., v. United States, Dockets 19 and 188* (Report). The Report recommended that the fund should be allocated pro rata between the six Minnesota Chippewa Bands (Bands) based upon the number of tribal members currently enrolled within each of the Bands.

After issuing the Report, the Bureau of Indian Affairs (BIA) met several times with the TEC and the Bands' representatives to discuss the Results of Research Report and the method for allocating the judgment funds. The Department understands that the TEC remains constant in its position on the allocation of the funds, which is to divide the funds evenly six ways. This proposal is reflected in H.R. 3699.

On November 25, 2005, the BIA sent the TEC a copy of the draft legislative proposal for the division of the judgment funds, and requested its comments. The TEC did not comment on the BIA's draft legislative proposal. We met with the TEC on January 19, 2006, to further discuss the apportionment of the judgment funds. On May 1, 2006, the Honorable Norman W. Deschampe, Chairman, Grand Portage Reservation Tribal Council (GPRTC) sent us a letter requesting us to "forego any recommendations to the Congress of the United States that would contradict the decision of the Minnesota Chippewa Tribe regarding the distribution of the judgment funds awarded in *Minnesota Chippewa Tribes, et al. v. United States*, Docket Nos. 19 and 188." We advised the GPRTC Chairman that under the Indian Tribal Judgment Funds Act (Act) the Department has to prepare and submit to Congress a plan for the use and distribution of judgment funds awarded by the Indian Claims Commission or the United States Court of Federal Claims. Under the Act, the plan must include identification of the present-day beneficiaries, a formula for the division of the funds among two or more beneficiary entities if such is warranted, and a proposal for the use and distribution of the funds. The Act also requires the Secretary to prepare a plan which shall best serve the interests from all those entities and individuals entitled to receive funds of each Indian judgment.

The TEC's position is that it has the right to determine the amount of each share allocated to the six Bands, and the BIA is duty-bound to abide by the decision of the tribal governing body. Federal courts, however, have held that Indian claims judgment fund award distributions are a question for Congressional and administrative determination. In *Peoria Tribe v. United States,* Appeal No. 12-63, decided March 12, 1965, 169 Ct. Cl. 1009, the court held the following:

> How the award is to be paid and precisely who can participate in an award to the Peoria Tribe on behalf of the Wea Nation are questions for Congressional and administrative determination. We do not decide whether or not the Treaty of May 30, 1854, 10 Stat. 1082, made the consolidated Peoria Tribe the full and only successor to the claims of the Wea Nation arising out of events prior to that treaty; nor do we decide, on the other hand, that only descendants of Weas can benefit from the award in this case. These and like issues we leave open for decision by the legislative and executive branches.

We are unable to find a compelling reason to support a disproportionate division of the funds. The Department believes that if the funds were distributed under the Nelson Act, which is the best evidence of Congressional intent in this situation, the funds would be distributed per capita to all of the enrolled members of each of the six Minnesota Chippewa Bands. Accordingly, we continue to support the recommendation that the funds be allocated pro rata among the six Bands based upon the number of tribal members enrolled with each Band, as reflected in H.R. 2306.

H.R. 2306 gives consideration to a particular issue raised by TEC. Some of the Bands contributed funds to pay for expert witness expenses incurred in the litigation of the claim. H.R. 2306 provides for the reimbursement of those expenses prior to the division of the judgment funds among the Bands. H.R. 2306 also contains important language that shields the Secretary from any liability for the expenditure or investment of the monies withdrawn.

Mr. Chairman, this concludes my statement and I will be happy to answer any questions you may have.